(11C)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941—No. 811.

SOLOMON G. SALOMON,

Petitioner,

against

VAN S. MERLE-SMITH, *et al.*, J. P. MORGAN, *et al.*, and J. HERBERT CASE, *et al.*, Contracting Committees, THE CITY OF NEW YORK, the TRANSIT COMMISSION and all other parties to Plan and Agreement to end the receivership of Interborough and Manhattan Companies, THOMAS E. MURRAY as Interborough Receiver and WILLIAM ROBERTS, Receiver of Manhattan Railway Company,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

WILLIAM C. CHANLER,
Corporation Counsel,
Attorney for The City of New York.

WILLIAM S. GAUD, JR.,
Of Counsel.

CHESTER W. CUTHELL,
Special Counsel to the Transit Commission.

ROBERT W. MALONEY, JR.,
Of Counsel.

BOYKIN C. WRIGHT,
Solicitor for Van S. Merle-Smith and others as a Protective Committee for Manhattan Railway Company Consolidated Mortgage 4% Gold Bonds.

CLIFTON MURPHY,
DANIEL JAMES,
Of Counsel.

This brief is joined in by parties whose names appear on pages 8 and 9.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.

INDEX.

	PAGE
PRELIMINARY STATEMENT	1
THE PETITION	3
POINT I. The petition does not deal with the orders and decrees which were entered in connection with the Unification Plan, and therefore raises no issues on which certiorari can be granted	6
POINT II. The petition should be denied	7

TABLE OF CASES.

Manhattan Railway Company v. *Central Hanover Bank and Trust Company*, 99 F. (2d) 789 (1938), certiorari denied, 306 U. S. 641 (1939)	3
Murray v. *Roberts*, 103 F. (2d) 889 (1939), petition for certiorari dismissed per stipulation, 311 U. S. 720 (1940)	4

STATUTES.

New York Rapid Transit Act (Laws of 1891, Ch. 4), §24	4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 811.

SOLOMON G. SALOMON,
Petitioner,

against

VAN S. MERLE-SMITH, *et al.*, J. P. MORGAN, *et al.*, and J. HERBERT CASE, *et al.*, Contracting Committees, THE CITY OF NEW YORK, the TRANSIT COMMISSION and all other parties to Plan and Agreement to end the receivership of Interborough and Manhattan Companies, THOMAS E. MURRAY as Interborough Receiver and WILLIAM ROBERTS, Receiver of Manhattan Railway Company,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Preliminary Statement.

This petition is filed by Solomon G. Salomon, a layman who appears in this proceeding as his own counsel.*

* The Court will note that this petition arises out of the same proceedings as does that now before the Court in *Manheim* v. *Merle-Smith*, No. 806, October Term, 1941. We repectfully refer the Court to the brief submitted in opposition to the *Manheim* petition for a statement of the facts and circumstances out of which the present *Salomon* petition arose.

Salomon has appeared throughout the receivership proceeding, from time to time presenting his views of various divergent interests. He has been in this litigation almost from the outset, and has taken advantage of every opportunity to present his personal views on almost every issue which has arisen. Despite the fact that the different interests have been ably represented by counsel throughout the receivership proceedings, Salomon at one time or another has been in disagreement with them all. When satisfied with the results obtained, he has even made vocal his dissatisfaction with the method of attaining them. On numerous occasions he appealed to the Circuit Court of Appeals, and he has also attempted to come to this Court. He has yet to achieve success in any Court.

The record does not disclose what securities Salomon now owns, or in what capacity he has filed his present petition. At one time or another he has claimed to be the owner of both Interborough and Manhattan securities. At the time of his appeal to the Court below, he apparently held certain Interborough securities, as well as $47,000 principal amount of Manhattan Consolidated Mortgage Bonds, $11,000 principal amount of Manhattan Second Mortgage Bonds, and 560 shares of Manhattan Guaranteed 7% Stock. However, as he himself disclosed in a reply brief submitted in the Court below, he sold, at some time prior to the submission of that brief, $46,000 principal amount of his Consolidated Mortgage Bonds and 50 shares of his Guaranteed 7% Stock. Whether he has sold any further securities since that time we do not know.

The Petition.

(1)

From a reading of the petition, it is exceedingly difficult to determine precisely what relief Salomon seeks. As we analyze his petition, he seems to be once more arguing the same subject which he has been arguing at every opportunity throughout the receivership, namely, his own personal views as to the issue of disaffirmance of the Manhattan lease. That question seems to be the focal point of all his discussion.

Admittedly, the disaffirmance issue was of fundamental importance in the entire receivership. However, Salomon has been insistent upon having its intricate and complicated issues tried and re-tried upon every collateral matter which has arisen. His dissatisfaction throughout the receivership seems to have been based upon a failure of the courts to adopt his own personal views of the law governing disaffirmance. For example, when the Sixth Avenue Elevated Line was sold in foreclosure because of tax defaults of over $9,000,000, Salomon's views on the disaffirmance issue were again brought forward and presented to both the District Court and the Circuit Court of Appeals as a bar to the sale. *Manhattan Railway Company* v. *Central Hanover Bank and Trust Company,* 99 F. (2d) 789, 793 (1938), certiorari denied, 306 U. S. 641 (1939).

(2)

Presumably, Salomon intends to bring up by this petition the issue of the legality of the Unification Plan. He seemingly takes the position that the Plan was not legal because the disaffirmance issue was not properly decided. But the disaffirmance case was decided by the Circuit Court

of Appeals in *Murray* v. *Roberts,* 103 F. (2d) 889 (1939), petition for certiorari dismissed per stipulation, 311 U. S. 720 (1940). The time for applying to this Court for a review of that case has passed. Salomon cannot now attack collaterally the correctness of that decision, which constituted the basis upon which the Unification Plan was negotiated and carried out.

In connection with his assertions concerning the disaffirmance issue, Salomon adverts in several places to Section 24 of the New York Rapid Transit Act. We think it necessary here to do no more than point out that the interpretation of Section 24 was only one of many phases of the disaffirmance litigation; that the interpretation of this section was by no means the simple matter Salomon indicates, as will be shown by a reading of the decisions of the courts below; that the interpretation of this section for purposes of the present case has been finally determined by the disaffirmance decision of the Circuit Court of Appeals, on which the time to seek certiorari has expired; and that, in any event, this unique state statute, with its localized application and with a vanished subject matter, could not possibly be of sufficient public interest to warrant a review of its interpretation by this Court.

Salomon also takes exception to numerous other orders and decrees which were entered in the receivership proceedings over the past eight years, and which, having been improperly decided according to his view, would make illegal any Unification Plan that was adopted. In other words, he seeks not only to upset the Unification Plan upon grounds which are utterly irrelevant and without substance, but also to persuade this Court to grant a writ of certiorari to review many orders and decrees as to which no right to petition for a writ now exists.

Thus, although the entry of the orders and decrees relating to unification furnished a pretext for the filing of his petition, the petition actually constitutes an attack upon the many orders and decrees with which Salomon has been dissatisfied, which were entered from the beginning of the receivership.

(3)

Illustrative of Salomon's dissatisfaction with the conduct of the receivership proceedings as a whole, is the intemperance of the language which he uses to describe the conduct of those proceedings. His petition makes only too clear his conviction that both the District Court and the Circuit Court of Appeals deliberately and calculatingly mismanaged the receivership estates. To cite only a few instances of his lack of restraint, he refers to portions of the opinion of the Circuit Court of Appeals below as "twaddle" (p. 23); he speaks of Judge Patterson as having been "determined to accomplish his own purposes" (p. 25); he adverts to the question of "whether the administration of the receivership was corruptly and/or negligently in favor of the controlling bankers" (p. 26); he states that Judge Patterson "thumbed his nose at the law and the Mandate" (p. 29); he speaks of Judge Patterson's "ducking his duty" (p. 29), of his "stubborn bias in favor of the Interborough bankers' interests" (p. 29), of his "determination to nevertheless deprive me, and others who refused to be bullied, of our rights" (p. 30); and he asserts that the Circuit Court of Appeals "ducked" the issues which were before it (p. 31).

In fact, the content of his petition is made up in principal part of abuse of the courts, which undoubtedly grows out of his personal dissatisfaction with the results achieved,

but which has nothing to do with the legal and factual questions that were before the courts.

I.

The petition does not deal with the orders and decrees which were entered in connection with the Unification Plan, and therefore raises no issues on which certiorari can be granted.

Salomon's petition does not discuss or analyze the question of whether the Unification Plan was fair, equitable or feasible, although the order of March 15, 1940, finding it to be fair, equitable and feasible is one of the three orders from which he appealed to the Circuit Court of Appeals. His petition does not discuss or analyze the Manhattan foreclosure sale or the order settling the reciprocal Interborough-Manhattan claims, both of which underlay the order on the fairness of the Plan. Indeed, he did not even appeal from either of those orders. His petition does not discuss or analyze any of the evidence on the values of the properties, or the amounts of the respective claims of the various classes of security holders. In short, his petition fails completely to deal with any of those problems which are fundamental to the orders and decrees which he seeks to have reviewed.

As we said at the outset, Salomon once again is concerned with the disaffirmance of the Manhattan lease. He has seized the opportunity of filing this petition in the hope of finding another forum in which to argue that matter. To show that the petition should be denied, we cannot improve upon the language of Judge Swan, who said (R., p. 962):

> "The contentions of appellant Salomon, a layman arguing his own case in a proceeding which

Judge Patterson characterized as the most complex he had ever encountered, are quite difficult to grasp. In so far as they can be understood we agree with respondents that they constitute in substance a re-argument of the disaffirmance issue, Salomon claiming, as a holder of Manhattan securities, that the rental obligations of Interborough to Manhattan should have been carried out to the letter. He further appears to contend that the *certiorari* proceedings in *Murray* v. *Roberts,* 103 F. 2d 889 on the disaffirmance question should have been prosecuted fully and that any compromise of the vexatious questions involved was improper. As we have indicated in the treatment of the appeal of Manheim, we conclude that the Settlement Proceedings resolving the conflicting claims of Manhattan and Interborough were properly instituted and concluded and should not be set aside; and certainly we shall not, in any event, decide the merits of such claims as this appellant appears to desire. These issues have wisely been set at rest."

II.

The petition should be denied.

Dated, New York, N. Y., January 12, 1942.

Respectfully submitted,

WILLIAM C. CHANLER,
Corporation Counsel,
Attorney for The City of New York.

WILLIAM S. GAUD, JR.,
Of Counsel.

CHESTER W. CUTHELL,
Special Counsel to the Transit Commission.

ROBERT W. MALONEY, JR.,
Of Counsel.

BOYKIN C. WRIGHT,
Solicitor for Van S. Merle-Smith and others as a Protective Committee for Manhattan Railway Company Consolidated Mortgage 4% Gold Bonds.

CLIFTON MURPHY,
DANIEL JAMES,
Of Counsel.

The undersigned hereby join in the foregoing brief:

EDWIN S. S. SUNDERLAND,
Solicitor for J. P. Morgan and others as a Committee for Interborough Rapid Transit Company First and Refunding Mortgage 5% Gold Bonds, and Guaranty Trust Company of New York, as Trustee.

CHESTER F. LEONARD,
Of Counsel.

PHILIP A. CARROLL,
Solicitor for J. Herbert Case and others as a Committee for Interborough Rapid Transit Company Ten-Year Secured Convertible 7% Gold Notes.

GUY CARY,
CLIFFORD M. BOWDEN,
Of Counsel.

CARL M. OWEN,
Solicitor for Thomas E. Murray as Receiver of Interborough Rapid Transit Company.

ALLEN S. HUBBARD,
Solicitor for William Roberts as Receiver of Manhattan Railway Company.

HAROLD C. MCCOLLOM,
Solicitor for Central Hanover Bank and Trust Company, as Trustee under the Consolidated Mortgage of Manhattan Railway Company.

ORRIN G. JUDD,

JESSE E. WAID,
Solicitor for Bankers Trust Company, as Trustee under Collateral Indenture Securing Ten-Year Secured Convertible 7% Gold Notes of Interborough Rapid Transit Company.

CHAUNCEY BELKNAP,
Solicitor for Curtis, Belknap & Webb, as Attorneys-in-Fact for certain holders of Second Mortgage Bonds of Manhattan Railway Company.

CHARLES FRANKLIN,
Solicitor for Manhattan Railway Company.

RAYFORD W. ALLEY,
Solicitor for William S. Kies and others as the Independent Protective Committee for Manhattan Railway Company Consolidated Mortgage 4% Bonds.

JOHN S. CHAPMAN, JR.,
Solicitor for Theodore S. Watson and others, as a Protective Committee for Guaranteed 7% Stock of Manhattan Railway Company.

C. FRANK REAVIS,
Solicitor for Charles Franklin and others as a Committee for holders of Modified Stock of Manhattan Railway Company.

LOUIS BOEHM,
Solicitor for Norman Johnson and others, as a Committee for Ten-Year Secured Convertible 7% Gold Notes of Interborough Rapid Transit Company.

JOHN B. DOYLE,
Solicitor for Harold Palmer and others as a Committee for holders of 7% Guaranteed Stock of Manhattan Railway Company.

(11d)

Office - Supreme Court, U. S.
FILED
JAN 15 1942
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941—No. 811.

SOLOMON G. SALOMON,

Petitioner,

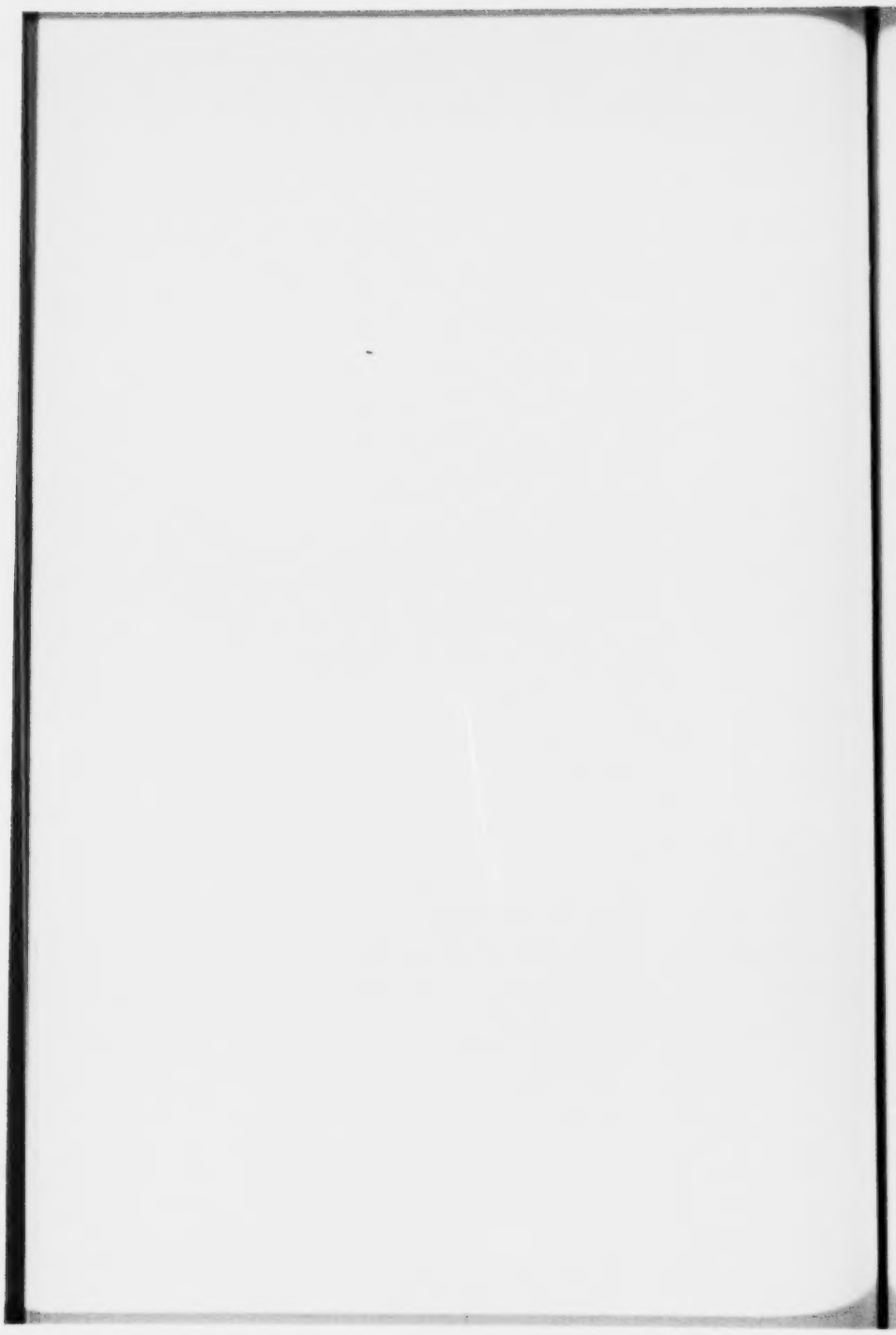
against

VAN S. MERLE-SMITH, *et al.*, J. P. MORGAN, *et al.*, and J. HERBERT CASE, *et al.*, Contracting Committees, THE CITY OF NEW YORK, the TRANSIT COMMISSION and all other parties to Plan and Agreement to end the receivership of Interborough and Manhattan Companies, THOMAS E. MURRAY as Interborough Receiver and WILLIAM ROBERTS, Receiver of Manhattan Railway Company,

Respondents.

Memorandum, Pointing Out Misstatements Contained in the Briefs of the Respondents, Wherein Said Respondents Oppose the Respective Petitions of Paul E. Manheim and Solomon G. Salomon for Writ of Certiorari—October Term, 1941—Nos. 806 and 811.

SOLOMON G. SALOMON, *pro se,*
18 Pine Street,
Woodmere, N. Y.



IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 811.

SOLOMON G. SALOMON,
Petitioner,
against

VAN S. MERLE-SMITH, *et al.*, J. P. MORGAN, *et al.*, and J. HERBERT CASE, *et al.*, Contracting Committees, THE CITY OF NEW YORK, the TRANSIT COMMISSION and all other parties to Plan and Agreement to end the receivership of Interborough and Manhattan Companies, THOMAS E. MURRAY as Interborough Receiver and WILLIAM ROBERTS, Receiver of Manhattan Railway Company,
Respondents.

Memorandum, Pointing Out Misstatements Contained in the Briefs of the Respondents, Wherein Said Respondents Oppose the Respective Petitions of Paul E. Manheim and Solomon G. Salomon for Writ of Certiorari—October Term, 1941—Nos. 806 and 811.

Preliminary Statement

The Respondents, parties to the briefs in opposition to the petitions of Paul E. Manheim and Solomon G. Salomon, —October Term, 1941, Nos. 806 and 811,—have made such serious misstatements in said briefs that it behooves petitioner Salomon to call this Court's attention to the misstatements, in order to avoid the possibility of the misstatements being overlooked by this Court because of the press of matters calling for the Court's consideration.

Misstatements in Brief Opposing Manheim's Petition

1. The footnote on page 8 of the brief opposing Manheim's petition, averring **"the relevant portions"** of Section VII of the Public Service Law are set forth in the appendix to said brief, is not true.

Two relevant portions of subdivision 2 of §123 and all of relevant subdivision 10 of §124 of said Section VII were omitted by the Respondents. Exhibit A, annexed to this memorandum, sets forth all the relevant portions of said subdivision 2 of §123 and all of said subdivision 10 of §124.

The provision in subdivision 2 of §123 providing **the right** of Salomon, as holder of Manhattan Guaranteed 7% Stock, to appraisal of the value of his stock, is of course relevant to the question of whether the Plan was feasible as a matter of law.

2. The averments on pages 9, 10 and the first three lines of page 11 of said brief constitute a half-truth. Actually the Interborough-Manhattan Unification Plan was entered into under subdivision 12 of §124 of Section VII of the Public Service Law which did not become effective until May 19, 1939. This addition to said law was added by the state law, 1939, Chapter 477.

3. The statement on page 13 of said brief that only 27.55% of Manhattan Guaranteed 7% Stock and 63.27% of the Manhattan Modified Guarantee Stock had been deposited on November 22, 1939 is untrue.

On that day 400,675 shares of Manhattan Stock had been deposited and the City became the owner of more than two-thirds of all Manhattn shares of stock on November 22, 1939 as provided in the Plan and evidenced by the Resolutions of the Transit Commission set forth in Volume I, pages 385-87 of the Record on Appeal.

Being a non-assenting holder of Manhattan Guaranteed 7% Stock, Salomon had and has the right to appraisal provided in Article VII, §123, subdivision 2 of the Public Service Law, and Salomon contends the denial thereof in the Plan is not feasible as a matter of law.

Misstatements in Brief Opposing Salomon's Petition

1. The last paragraph on page 2 of the brief in opposition to Salomon's petition is untrue in so far as it infers Salomon would have petitioned this Court for writ of certiorari without revealing to the Court "Whether he had sold any further securities" than those set forth in his Reply Brief below.

Salomon has not sold any other of his securities and the Respondents could have informed themselves by asking Salomon.

2. The statement in the last paragraph on page 4 of the brief opposing Salomon's petition, that Salomon **"would make illegal any Unification Plan that was adopted"**, is untrue.

Salomon is not so foolish as to contend that the City could not have legally acquired title to Manhattan Properties after having acquired over two-thirds of Manhattan's shares of capital stock, by the method provided in subdivision 2, §123 of Article VII of the Public Service Law.

Salomon does contend that the City could not legally, or justly, acquire title to any Manhattan property via the method provided in Article Two (2) of the Plan, and he contends that the latter method violates the provisions of the Constitution of the United States which provide against the taking of anyone's property without due process of law and without just compensation.

3. It is not true that Salomon's language in his petition for writ of certiorari is intemperate, as stated on page 5 of the brief in opposition to said petition. Neither is it true that he lacked restraint in using the words and expressions quoted on said page 5.

Salomon used concise language on pages 17 to 26 of his petition to succinctly state the matters to be considered in connection with his petition, and to so state the specification of errors to be urged in the event his petition is granted.

The question is whether Salomon's statements clearly state **the matters to be considered** and **the specifications of**

errors to be urged by him; and Salomon submits it is not intemperate to call a spade a spade, and that he was not called upon to restrain himself in clearly stating the **reasons for granting the writ.**

4. Under the heading **"I"** Respondents allege:

> "Salomon's petition does not discuss or analyze the question of whether the Unification Plan was fair, equitable and feasible, although the order of March 15, 1940, finding it to be fair, equitable and feasible is one of the three orders from which he appealed to the Circuit Court of Appeals."

but Judge Patterson's order of March 15, 1940 did not find the Plan feasible. The Record (Vol. I, p. 419) shows he then thought the Plan timely.

There is a vast difference, as a matter of law, between a timely and a feasible plan.

The Record on Appeal (Vol. II, pp. 879-87) shows that Mr. Gutman analyzed the Plan as premature and since same also shows Salomon adopted said analysis, it is not true that Salomon did not, in effect, analyze the said order of March 15, 1940 in advance of the issuance thereof. In fact the foresaid is set forth under **B** on page 5 of Salomon's petition.

Respondents, under said heading **"I"**, allege Salomon's

> "petition does not discuss or analyze the Manhattan foreclosure sale"

which is not true. Salomon's petition to the Circuit Court of Appeals for rehearing is incorporated in his petition to this Court for writ of certiorari and shows he did raise the issue of the fairness of the foreclosure in the Court below.

Salomon's **specifications of errors to be urged** numbered 1, 3, 4 and 5 also belie the said allegation. Salomon's statement of **the matters to be considered in connection with this (his) petition** numbered 1st, 8th, 9th, 10th, 12th, 16th and 18th also belie said allegation.

Respondents, under said heading **"I"**, allege Salomon's petition does not discuss or analyze

> "the order settling the reciprocal Interborough-Manhattan claims"

and this also is not true. Salomon's petition to the Circuit Court of Appeals for rehearing (petition for writ of certiorari, p. 14, next to last line, to p. 15, line 9, and p. 15, lines 23 to 28) shows he raised the issue that the order settling the reciprocal claims was unfair. Salomon's statement of **the matters to be considered in connection with this (his) petition** numbered 6th, 7th and 16th belie said allegation and by the contention that among the **reasons for granting the writ is**

> "The rationale of said holding confirmed the contention (allegation 9) in Manhattan Receiver's Application No. 5, March 31, 1933, alleging Manhattan and the holders of its guaranteed 7% stock were and are operating creditors of the Interborough System" (Salomon's petition for writ, p. 30, lines 2 to 6).

WHEREFORE, Salomon submits, Respondents' briefs in opposition to the grant of writ of certiorari are disingenuous.

Respectfully submitted,

SOLOMON G. SALOMON, *pro se,*
18 Pine Street,
Woodmere, N. Y.

EXHIBIT A

Article VII, New York Public Service Law

§ 123. *Commission to prepare plan*

* * *

2. * * * Without limiting the authority and discretion of the commission, it may consider the incorporation in the plan of provisions whereby the title to such railroads as are not already owned by the city and whose ownership thereby is deemed by the commission to be desirable may be vested in the city and whereby rights under existing contracts for the construction, equipment and operation of rapid transit railroads already owned by the city may be acquired by the city. Such title and/or such rights may be vested in the city directly or may first pass through an intervening corporation and then to the city, either free and clear of liens and encumbrances or subject to specified liens and encumbrances, in return for a lease or leases by the city of such railroads and of any other railroads owned by it and such other or additional considerations as the commission may determine with the approval of the local authority. In the event of the incorporation of such provisions in the plan the commission shall outline an arrangement whereby outstanding securities of the railroad companies may be retired either by application of the amounts paid by the city for the railroads acquired or through the issue of bonds of the board, or in part by one method and in part by the other, and whereby such bonds or other securities may be amortized or otherwise paid. Any railroad company included in the plan may, with the consent of the holders of record of at least two-thirds of its outstanding shares of stock entitled to vote thereon given as provided in section one hundred and forty-eight of the railroad law, transfer and convey its property, appurtenances and franchises, or any part thereof, to the city and/or such intervening corporation as provided in the plan, subject, however, to the rights of appraisal of

the shares of any dissenting stockholder as provided in section one hundred and sixty-one of the railroad law.

* * *

§ 124. *Procedure under plan*

* * *

10. Recaptured railroads. All the provisions of this article and all powers hereby granted with reference to railroads and properties and interests therein shall likewise apply with equal force and effect to recaptured railroads; provided, however, that nothing contained in this article with respect to recapture or recaptured railroads shall alter or affect any rights or remedies of the city or of any railroad company under any existing contract.

(11e)

Supreme Court of the United States

October Term 1941—No. 811

THE AMERICAN BRAKE SHOE AND FOUNDRY COMPANY,
Plaintiff,

—against—

INTERBOROUGH RAPID TRANSIT COMPANY,
Defendant.

CENTRAL HANOVER BANK AND TRUST COMPANY, as Trustee,
Plaintiff,

—against—

MANHATTAN RAILWAY COMPANY, et al.,
Defendants.

THE AMERICAN BRAKE SHOE AND FOUNDRY COMPANY, et al.,
Plaintiffs,

—against—

INTERBOROUGH RAPID TRANSIT COMPANY, et al.,
Defendants.

SOLOMON G. SALOMON, for himself,
Appellant,

—against—

VAN S. MERLE-SMITH, et al., J. P. MORGAN, et al. and J. HERBERT CASE, et al., Contracting Committees, THE CITY OF NEW YORK, the TRANSIT COMMISSION and all other parties to Plan and Agreement to end the receivership of Interborough and Manhattan Companies, THOMAS E. MURRAY, as Interborough Receiver, and WILLIAM ROBERTS, Receiver of Manhattan Railway Company,
Appellees.

PETITION ASKING RECONSIDERATION OF PETITIONER'S PETITION, OF OCTOBER TERM, 1941—NO. 811, DENIED FEBRUARY 2, 1942.

SOLOMON G. SALOMON, pro se,
18 Pine Street, Woodmere, N. Y.

INDEX

PAGE

Petition Asking Reconsideration of Petitioner's Petition, of October Term, 1941—No. 811, Denied February 2, 1942 1

Statement 2

POINT I.

1. The settled doctrine of this Court is, that if a Plan is not feasible as a matter of law it cannot be validly approved by any Court. The rationale of the doctrine is the following: Since an executed plan, (whether of reorganization or liquidation), is an act of administration performed by the judge in charge of the receivership, therefore, the judge may not approve any plan submitted to him except it conforms to law; otherwise, the judge will have committed himself to break the law. It is a matter of fundamental public concern that judges shall not break the laws they are charged with enforcing 7

The decision and mandate in *Murray* v. *Roberts* and the order of Judge Patterson, adopting same, constitute affirmance of the lease 9

What would be the status of the receivership if Judge Patterson's order adopting the decision and mandate in *Murray* v. *Roberts* does not, in effect, constitute affirmance of the lease? 11

Judges, (both of original and appellate jurisdiction), may not neglectfully or otherwise ignore the law 12

INDEX—(Continued)

PAGE

POINT II.

The C. C. A. had the question of sequence of priority of Interborough system's creditors before it in *Murray* v. *Roberts*. It decided Interborough bondholders had no right to payments on account of the debt owed them until all operating expenses involved in Interborough's obligation to operate the system had been fulfilled. Judge Patterson, at the hearings, in respect to the fairness of the Plan, said:

> "Does anybody in his senses think that every Manhattan bond and that every Manhattan share of stock is going to be paid in full before the money that was put in to build the subways and buy equipment?" (R. p. 881—lines 25 to 28).

Judge Swan's opinion, (R. pp. 951-962), in effect, admits Judge L. Hand, Judge Swan (himself) and Judge Chase were "not in their senses", on April 17, 1939, although no formal decree was entered by Patterson in respect to the question of sanity. The C. C. A. failed to perform its duty when it allowed Patterson to reverse the C. C. A., in effect, by approving the Plan and ordering consummation thereof. Petition No. 811 should be granted by this Court to pass upon the authority of the C. C. A. to allow itself to be reversed by a judge acting in the capacity of a district judge 14

Conclusion 18

Wherefore, I submit, Petition No. 811 should be granted on reconsideration of the denial thereof on February 2, 1942..... 20

INDEX—(*Continued*)

Cases Cited

Page

Case v. *Los Angeles Lumber Products Co.* (84 L. ed. 22, 28-9) 8

DuBois v. *Consolidated Rock Products Co.* (114 F. 2nd, 102) 85 L. ed. 603.....4, 6, 8

Jack v. *Williams*, 113 Fed. Rep. 823..... 15

Murray v. *Roberts* (103 F. 2d, 889).....5, 9, 11, 14, 15, 16, 17, 18, 19

National Surety Co. v. *Coriell*, 289 U. S. 426, 436, 77 L. ed. 1300, 1305..... 8

New York Trust Co. v. *Portsmouth & Exeter St. Ry. Co.*, 192 Fed. Rep. 728..... 15

Union Trust Co. v. *Curtis* (182 Ind. 61)..... 15

Statutes Cited

Judicial Code, Section 65 (28 U. S. C. A., Sec. 124) 9, 11, 15

Public Service Law, Section 123, Sub. 2, Section 124, Sub. 12 .....3, 4, 5, 11

Rapid Transit Act, Section 24, Sub. 3 and Section 27 .....5, 11, 12, 13

Supreme Court of the United States

October Term 1941—No. .....

THE AMERICAN BRAKE SHOE AND FOUNDRY COMPANY,
Plaintiff.

—against—

INTERBOROUGH RAPID TRANSIT COMPANY,
Defendant.

CENTRAL HANOVER BANK AND TRUST COMPANY, as Trustee,
Plaintiff.

—against—

MANHATTAN RAILWAY COMPANY, et al.,
Defendants.

THE AMERICAN BRAKE SHOE AND FOUNDRY COMPANY, et al.,
Plaintiffs.

—against—

INTERBOROUGH RAPID TRANSIT COMPANY, et al.,
Defendants.

SOLOMON G. SALOMON, for himself,
Appellant.

—against—

VAN S. MERLE-SMITH, et al., J. P. MORGAN, et al. and J. HERBERT CASE, et al., Contracting Committees, THE CITY OF NEW YORK, the TRANSIT COMMISSION and all other parties to Plan and Agreement to end the receivership of Interborough and Manhattan Companies, THOMAS E. MURRAY, as Interborough Receiver, and WILLIAM ROBERTS, Receiver of Manhattan Railway Company,
Appellees.

PETITION ASKING RECONSIDERATION OF PETITIONER'S PETITION, OF OCTOBER TERM, 1941—NO. 811, DENIED FEBRUARY 2, 1942.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

I respectfully petition and ask you to reconsider your decision, February 2, 1942, not to grant my petition

bearing Docket Number 811 of The Current Term of this Court (hereinafter called Petition No. 811).

Statement

On page 17 of Petition No. 811, I said the petition was:

> "the result of the Circuit Court's action of having ignored and failed to consider the matters involved in my appeal to them."

The matters involved in my appeal to the Circuit Court, (hereinafter called C. C. A.), were set forth, in accordance with the Court's rules, in my main brief filed in said court. Therefore, said court should have considered and decided each matter involved therein on its merits, and not upon the merits of the restricted appeal of another appellant. My "day in court", I maintain, is not limited to being heard only in the physical sense.

The matter of violation of my rights under the Federal Constitution, by the Federal District Court and its receivers as well as in the Plan, was presented by me as the first reason for finding the Plan and Agreement therein, not feasible as a matter of law, and therefore, not to be deemed fair and equitable. It was presented in these words:

> 'FIRST: They constitute, in effect a scheme which is unfair as a matter of law because it operates to take from Manhattan Company and through it, from Appellant and others similarly situated, that which belongs to them, without due process of law and to deprive Manhattan Company, Appellant and others similarly situated, of their belongings, without just compensation." (p. 8, my Main Brief to C. C. A.).

The City and other respondents claimed the Plan was

authorized by Section 124 of the Public Service Law of the State of New York, (p. 17, Respondents' Brief below and printed in Appendix of same). Respondents referred to subdivision 12 of said Section 124 on page 23 of their brief when they said:

> "* * * the City obtained title to these properties through a series of stated offers to the several classes of Interborough and Manhattan security holders * * *."

I contended, (pp. 7-8 and 13-14 of my Reply Brief), that said section and its context, Section 123, endows me with the right of appraisal of my stock by a prescribed method —due process of law—and the Plan operates to deprive me of said right which is, of course, property. My contentions were expressed in these words:

> "Item 9 is disposed of by referring to Article VII, New York Public Service Law, Section 123, paragraph 2 and noting that on page ii of the Appendix to the answering brief there has been omitted from paragraph 2 the following important provision thereof:—
>
> 'Any railroad company included in the plan may, with the consent of the holders of record of at least two-thirds of its outstanding shares of stock entitled to vote thereon given as provided in section 148 of the railroad law transfer its property * * * or any part thereof to the City * * * subject, however, to the *right of appraisal of the shares of any dissenting stockholder** as provided in section 161 of the railroad law.' (pp. 7-8, *supra*). *Italics in original.
>
> "POINT 3
>
> As set forth in POINT 2, the plan could not

properly be consummated by a foreclosure of the Manhattan Consolidated Mortgage even though the foreclosure of the Interborough Mortgage could not be refused.

It follows from the foresaid that the only lawful method which the City could employ to consummate the Plan in respect to Manhattan was by a purchase of the securities under Article Eight, Section VII of the Plan. Since it is inherent in the Plan that it be consummated either through foreclosure of both properties or purchase of Interborough's bonds and 7% notes (the City was not obliged to buy other Interborough securities), the City must be deemed to have purchased the Interborough securities as well as the Manhattan securities.

POINT 4

Under the Unification Act and that part of Section 123 thereof omitted by Respondents in printing the Appendix to their brief, the City was under the necessity of proceeding to a real evaluation of my Guaranteed stock and the Court was under the duty of exacting that the rentals due me and impounded by it, be paid to me in addition to the said value of my stock.

POINT 5

The City on and after November 22, 1939 was to all practical effect in the position of a holding company dissolving two subsidiaries, one solvent and the other insolvent.

Under the principles enunciated by the Supreme Court in *DuBois* v. *Consolidated Rock Products Co.*,* the solvent Manhattan Company may not be dissolved without protecting the minorities' security holders who are not content with the City's

> self-serving plan to dissolve the two subsidiaries under the Plan which was carried out for it, by the representatives of the former holder of the majorities of the securities. (pp. 13-14, *supra*)."
> *Italics in original.

These are among the contentions which the C. C. A. characterized as "quite difficult to grasp", (R. p. 962), and in continuation, referring to my contentions, said:

> "In so far as they can be understood we agree with respondents that they constitute in substance a reargument of the disaffirmance issue, * * *."

Is it not apparent that the C. C. A. wished to avoid true consideration and decision of the matters involved in my appeal, on their merits?

Are not these things also apparent?

> 1. That the Plan was and is unauthorized by law, by the terms of the Public Service Law, because my and other non-assenters' rights to have our stock appraised by the method defined in Section 123, subdivision 2, (*supra*), was not provided in the Plan, except if there be a binding adjudication that the Public Service Law, by reason of context or obscurity, needs interpretation, and the required interpretation is supplied in the adjudication and shows the Plan to be lawful.
>
> 2. (a) That the Plan is not an adjudication that the holders of Interborough bonds had or have priority rights over Manhattan Company to more than $70,000,000 of assets of Interborough, distributed to holders of the bonds up to February, 1939; and that under the existing law of the receivership—*Murray* v. *Roberts* (103 F. 2d. 889), as fortified by the Rapid Transit Act law of New York, Section 24, subdivision 3—the Manhattan

Company is entitled to priority over the Interborough bondholders; and

(b) Therefore, the District Court was and is bound, by the terms of its orders, (authorizing distributions of said $70,000,000), to recover the amounts distributed under the orders and redistribute same to the Manhattan Company, the holders of its securities, and the Interborough bondholders, according to the established sequence of priorities; and therefore, absent such distribution, the receivership was and is not validly terminated.

3. That the decision of the Circuit Court of Appeals for the Second Circuit is in conflict with the decision of the Circuit Court of Appeals for the Ninth Circuit in the *Consolidated Rock Products Co.* case, (114 F. 2d. 102), and in conflict with this Court's decision in the same case, (85 L. ed. 603), in the manner set forth in "POINT 5" of my Reply Brief, (*supra*).

Another thing is, of course, apparent. The C. C. A. in its statement of the case showed ownership, by me, of $47,000 Manhattan Consolidated Mortgage bonds, $11,000 Manhattan Second Mortgage bonds, (hereinafter respectively called 1st and 2nd Mortgage), and 560 shares of Guaranteed 7% stock. Consequently, am I not entitled to a decision on the merits of my appeal or appeals in respect to each?

Should these not be decided, categorically? I maintain there should be:

1. A decision of the matters involved in my appeal in respect to the 1st Mortgage bonds of which some $77,000, apparently, were outstanding May 1, 1941 (R. p. 954).

2. An independent decision of the matters involved in my unrestricted appeal in respect to my $11,000 2nd Mortgage bonds, of which 521,000,

apparently, were outstanding May 1, 1941, (R. p. 954), for the reason that Manheim's appeal on behalf of $484,000 of said bonds, was restricted and did not contest the validity of the transfer of Manhattan properties to the City via foreclosure, (R. p. 955), which I did and do contest on my own behalf and that of the owners of the other bonds not accounted for.

3. A decision of the matters involved in my appeal in respect to my Guaranteed 7% stock, of which some 1630 shares, apparently, were outstanding May 1, 1941, (R. p. 954).

POINT I.

1. The settled doctrine of this Court is, that if a plan is not feasible as a matter of law it cannot be validly approved by any Court. The rationale of the doctrine is the following: Since an executed plan, (whether of reorganization or liquidation), is an act of administration performed by the judge in charge of the receivership, therefore, the judge may not approve any plan submitted to him except it conforms to law; otherwise, the judge will have committed himself to break the law. It is a matter of fundamental public concern that judges shall not break the laws they are charged with enforcing.

This Court said, November 6, 1939:

> "We think that as a matter of law the plan was not fair and equitable.
>
> At the outset it should be stated that where a plan is not fair and equitable as a matter of law it cannot be approved by the court * * *. All those interested in the estate are entitled to the court's protection. * * * 'Every important deter-

> mination by the court in receivership proceedings calls for an informed, independent judgment.' National Surety Co. v. Coriell, 289 U. S. 426, 436, 77 L. ed. 1300, 1305, * * *" Case v. Los Angeles Lumber Products Co. (84 L. ed., 22, 28-9).

In connection with the matter of an "informed, independent judgment", this Court, on March 3, 1941, again citing *National Surety Co.* v. *Coriell*, said:

> "In the first place, there must be a determination of what assets are subject to the payment of the respective claims. This obvious requirement was not met. The status of the Union and Consumers bondholders emphasizes its necessity and importance." Consolidated Rock Products Co. v. Du Bois (85 L. ed. 603, 609.)

Here it was and is necessary to determine the status of the Manhattan bondholders and the Interborough bondholders in their relationship to one another. This determination, obviously, depends upon determination of whether Manhattan Company is an operating creditor of the Interborough Company and its receivers. As an operating creditor of the Interborough system, the rentals payable to Manhattan Company by the terms of the lease, (Article Ninth), include the obligation or value of supplying:

> "* * * rolling stock and equipment, so that the business of the said demised railways shall be preserved, encouraged and developed, * * *."

Your Honors are undoubtedly aware that such rolling stock and equipment was not supplied. The rentals also include the making good of the accrued depreciation incurred by the use of the rented property.

Therefore, a determination of whether Manhattan

Company and the holders of its securities are operating creditors of the Interborough System and its receivers must necessarily be had.

The decision and mandate in Murray v. Roberts and the order of Judge Patterson, adopting same, constitute affirmance of the lease.

The decision in *Murray* v. *Roberts* is interpreted by Judge Swan, in his opinion of August 12, 1941, in the following words:

> "* * * on April 17, 1939 an opinion was handed down holding that because of certain franchise obligations to the City the lease could not be disaffirmed unless, * * * these obligations could be performed by some means other than affirmance * * *." (R. p. 953).

Since there was no right to disaffirm the lease, and since no "means other than affirmance" thereof became available to June 12, 1940, the question arises: Under what legal right (means) did the Interborough receivers operate the Manhattan lines from August 26, 1932 to June, 1940?

The answer to the question, I submit, appears in the Judicial Code, Section 65, (28 U. S. C. A., Sec. 124), which provides:

> "Whenever in any cause pending in any court of the United States there shall be a receiver or manager in possession of any property, such receiver or manager shall manage and operate such property according to the requirements of the valid laws of the state in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof * * *."

Interborough, being required to operate its system under

its franchises, including the Manhattan lease, the leases from the City and the Extension Certificate, such operation was required of the Interborough receivers. Ergo, they necessarily adopted the lease on August 26, 1932. Therefore, Manhattan rentals must be paid either by recovering the interim debt service payments to Interborough bondholders, or by some other means, before there can be a valid termination of the receivership of the Interborough and the protective custody of the Court over the Manhattan Railway.

If the C. C. A. had not looked upon my contentions with contempt, (see opening sentence, last paragraph of its opinion, [R. 962]), they would have read and understood the first sentence of my Main Brief below, which reads:

> "This appeal is from the declaration filed on March 15, 1940, by the District Court, * * * wherein the court, * * * declared the Plan and Agreement hereinafter briefly outlined and described, to be a fair, equitable and feasible scheme for ending the Equity Receivership of the Interborough Transit Company, *which included protective receivership of the Manhattan Railway* Company; and from said Court's orders connected therewith, filed June 12, 1940. The Court, by said orders, (a), * * *; (b), * * *; and (c), * * *. *Said orders, unless corrected, would serve to rid the Court of its unfulfilled duties including the duty of settling and determining the impropriety of interim payment totalling over $70,000,000.*"*
>
> *Not Italicized in original.

The aforegoing shows I contended the receivership could not be *validly* terminated without a decree being issued, declaring the distributions to Interborough bondholders during the receivership, (before the remainder of the properties were turned over to the City), were not according to the priorities of the creditors, and with-

out an order being issued ordering correction of the mal-distributions through their recovery and proper re-distribution. In the event some more convenient method of correcting the mal-distributions had been available, then that should have been employed.

My Description and Outline of the Agreement, (Main Brief below, pp. 3-7), is, I submit, accurate. It specifically drew attention, (p. 5), to the fact that an alternate method, alternate to ARTICLE Two of the Plan, for consummating the Plan, had been provided therein, in ARTICLE EIGHT, Section VII. Having chosen to acquire securities, it follows that under the Public Service Law, Section 124, subdivision 12, the method provided in ARTICLE Two, (acquisition of title via foreclosure and receivership sale), was evidently precluded by the terms of the Plan itself, as well as by the context of Section 124 of the Public Service Law, provided in Section 123 thereof, *supra*.

What would be the status of the receivership if Judge Patterson's order adopting the decision and mandate in Murray v. Roberts does not, in effect, constitute affirmance of the lease?

Presuming there had not been a determination that the receivers had no right to disaffirm the lease, (see Judge Swan's interpretation of *Murray* v. *Roberts*, *supra*), and therefore, were not compelled by law, (Judicial Code, *supra*, and the Rapid Transit Act, Section 24, subdivision 3), to adopt the lease, and presuming I was seeking to re-argue the case of *Murray* v. *Roberts*, (none of which things I admit), there would still have to be a determination as to the matter of disaffirmance of the lease, to establish whether or not the rentals constituted operating expenses of the system. Roberts, in his Application No. 5, March 31, 1933 and ever after, claimed Manhattan rentals were operating expenses. Determination of that matter is necessary for the purposes of the

receivership, set forth in the American Brake Shoe Co.'s Bill of Complaint.

Obviously, *absent such determination, there can be no informed judgment of whether the protective custody of Manhattan could be validly terminated*, and hence, the Interborough receivership, validly terminated.

Judges, (both of original and appellate jurisdiction), may not neglectfully or otherwise ignore the law.

Obviously, it is a matter of fundamental public concern that judges shall not break the law they are charged with enforcing by neglect or by otherwise ignoring it.

The law of the land is that the rights of creditors of an insolvent defendant, (in this case, the Interborough), be ascertained and decreed; that the Court fully administer the fund constituting the entire railroad system and other assets of the defendant; and, for such purpose, marshal and administer all the assets of the defendant, ascertain the several and respective liens and priorities existing thereon, and enforce by decree the rights, liens and equities of the creditors of the defendant, as the same may be finally ascertained and decreed by the Court.

Such was the prayer in the Bill of Complaint under which this cause was initiated. Certainly, this receivership could not be lawfully dissolved by the court of original jurisdiction without having ascertained the respective liens and priorities and without having enforced them according to their lawful sequence.

Irrespective of the business complexities of the receivership, nothing stood in the way, at any time, of ascertaining whether Manhattan was an operating creditor of the Interborough system, by reason of Interborough's franchise and contract obligations in respect to its routes, under the Rapid Transit Act of the State of New York. Under said act, it operated its elevated railway routes

by virtue of Section 24, subdivision 3, as if they were original unitary routes; and it operated its subway routes under Section 27 thereof. Judge Patterson and the judges of the C. C. A. neglected or chose to ignore my often re-iterated insistence on Section 24 of the Rapid Transit Act.

Certainly, this receivership could not be lawfully dissolved by the Court without having ascertained the respective liens and priorities and without having enforced them according to their lawful sequence. Of course, the priority of an operating creditor over other Interborough creditors is not subject to doubt. It is evident that in the absence of such requisite determination, the judges of the C. C. A. and Judge Patterson neglected or ignored the necessity of enforcing the applicable law in the premises. *The matter was aggravated by the fact* that it was not proper to throw over or terminate the protective custody of Manhattan without the requisite fixing of its lawful priority as an operating creditor.

Therefore, I submit, it is fitting and proper, because of the fundamental public concern in the orderly enforcement of the law of the land, that this Honorable Court grant my Petition No. 811.

POINT II.

The C. C. A. had the question of sequence of priority of Interborough system's creditors before it in Murray v. Roberts. It decided Interborough bondholders had no right to payments on account of the debt owed them until all operating expenses involved in Interborough's obligation to operate the system had been fulfilled. Judge Patterson, at the hearings, in respect to the fairness of the Plan, said:

> **"Does anybody in his senses think that every Manhattan bond and that every Manhattan share of stock is going to be paid in full before the money that was put in to build the subways and buy equipment?"** (R. p. 881—lines 25 to 28).

Judge Swan's opinion, (R. pp. 951-962), **in effect, admits Judge L. Hand, Judge Swan (himself) and Judge Chase were "not in their senses", on April 17, 1939, although no formal decree was entered by Patterson in respect to the question of sanity. The C. C. A. failed to perform its duty when it allowed Patterson to reverse the C. C. A., in effect, by approving the Plan and ordering consummation thereof. Petition No. 811 should be granted by this Court to pass upon the authority of the C. C. A. to allow itself to be reversed by a judge acting in the capacity of a district judge.**

Judge Patterson assumed the protective custody of Manhattan Railroad Company together with supervision of the Interborough receivership. His duty was to preserve for Manhattan and its security holders, the rank of operating creditors, in which they had been established by the decision of the C. C. A. on April 17, 1939, and by the ensuing mandate.

Pursuant to his own opinion, filed June 18, 1938, he ordered debt service payments on Interborough bonds and 7% notes on July 1, 1938 and in January, 1939, because he had adopted the opinion of the Interborough receivers, set forth, (March 14, 1933), in their Application No. 17, wherein they alleged the right existed to disaffirm the Manhattan lease, and because he had rejected the opinion of Receiver Roberts, (March 31, 1933), in his Application No. 5, that Manhattan rentals were and are operating expenses of the Interborough system.

Patterson's manager, Receiver Murray, was obliged to perform Interborough's franchise obligations in the same manner and by the same means Interborough would have been obliged to perform them, if in possession, (Judicial Code, Section 65, *supra*). Such was the decision of the C. C. A. on April 17, 1939 (*Murray* v. *Roberts, supra*).

In respect to the priorities, referring to *Union Trust Co.* v. *Curtis,* (182 Ind. 61), the C. C. A. said:

> "It is a doubtful authority against the view we take. Aside from it we have found no case excusing non-performance, unless indeed the road has come to such a pass that it cannot earn its expenses of operation. New York Trust Co. v. Portsmouth & Exeter St. Ry. Co., 192 Fed. Rep. 728; Jack v. Williams, 113 Fed. Rep. 823. We do not believe that even then the property may be withdrawn and the remnant salvaged, for reasons we shall give; but in any event that is not the situation at bar. Our reasons for this belief are these. Ordinarily the doctrine (which we shall discuss later) that failure to exploit a franchise will forfeit it, is sanction enough to insure performance; and in the case of 'permissive' franchises the grantee is subject to no further control. If he is willing to throw up the whole franchise, he is free to retire. When, however, a franchise is made 'mandatory,' it is because this sanction

> is not thought to be sufficient guarantee, and the grantee must be understood irrevocably to dedicate the property to the performance of the duty expressly assumed. This is not an unfair imposition. Franchises are not ordinarily exploited by individuals, but by corporations, whose activities are limited to the one venture for which they are created: their property may well be subjected to this fundamental obligation ahead of all others. The bondholders are in substance co-adventurers and chargeable with the initial conditions imposed upon the enterprise; and the same is true, though in somewhat less measure, of general creditors who deal with the corporation. The only answer made to this is that the covenant of Article IX has become impossible of performance, and unreasonable to enforce. Neither objection is good: the trains can be run, and the duty to run them, as we shall show, entails a duty to keep possession at least of the Manhattan third tracks, and the further duty as a condition of possession, though not strictly as an obligation, to exploit them sufficiently to avoid forfeiture." (*Murray v. Roberts, supra*).

Patterson, in his opinion of March 12, 1940, (R. pp. 400-409), admitted he was reversed as to the existence of any right to dissaffirm the lease, but by his remark on March 6, 1940:

> "Does anybody in his senses think that every Manhattan bond and that every Manhattan share of stock is going to be paid in full before the money that was put in to build the subways and buy equipment?" (R. p. 881, lines 25 to 28)

wiped out the above quoted part of the decision, (*Murray* v. *Roberts*), which decides the relative positions of the Manhattan rentals and the obligations to the Interborough bondholders. In the same breath, he abandoned

his trusteeship involved in the protective custody of the Manhattan and the interests of Manhattan security holders; and, thereupon, purportedly terminated the Interborough receivership, to the damage of Manhattan security holders who did not assent to the Plan.

The colloquy in which the above quoted remark occurred is a part of that set forth on pages 879 to 887 of the Record on Appeal to the C. C. A.

The opinion of the C. C. A. (R. pp. 951-62), in effect, impugns its opinion in *Murray* v. *Roberts* as to the sanity of those judges, in relation to their ideas as to the relative position of the Manhattan rentals and the obligations to the Interborough bondholders. Although no formal decree was entered by Patterson in respect thereto, and therefore the question was not before the C. C. A., (in the appeal decided by it on August 12, 1941), the C. C. A., in effect, allowed Judge Patterson to reverse the C. C. A. as to the said relative position of rentals and bond service.

Obviously, the C. C. A. did not perform its duty, in allowing said reversal of itself by a lower Court to stand in a decision in which it determined not to consider the merits of my claims, which include the claim for some $56 per share rental to July 1, 1940 in respect to my Manhattan Guaranteed stock, and said:

> "* * * certainly we shall not, in any event decide the merits of such claim as this appellant appears to desire." (R. p. 962).

The C. C. A. refused to decide the merits of my claim that the receivership could not be terminated lawfully, until the unpaid rentals due under the Manhattan lease had been paid by the receivers to Manhattan Company and to me, according to the terms of the lease. I claimed the receiver had no right to disaffirm the lease and that he operated thereunder throughout the receivership; same being his only means to perform his franchise obligations

to operate the Interborough elevated railroad routes. The C. C. A. had decided the lease was his only existing means to perform said obligation. (*Murray* v. *Roberts*, *supra*).

I also claimed $56 per share rental were due to me to July 1, 1940 on my 560 shares of Manhattan Guaranteed stock and had been wrongfully diverted and paid to holders of Interborough bonds and 7% notes, who were not operating creditors; whereas, my status is that of operating creditor. I claimed that the Plan to terminate the protective custody of the Manhattan Company's and of my interests, was not fair, because the Plan arbitrarily provides that my interests in and to the physical and contractual assets of my company, and said rental claim for $56 per share, would be settled by allocating $27.62 cash or $35 minus, in City corporate stock, per share, in settlement of all my claims in respect to my stock; and, I claimed the Interborough receivership could not be terminated validly under such circumstances.

Since I am entitled to a determination in respect to my rights established by the C. C. A. in *Murray* v. *Roberts*, I submit it is fitting and proper that Petition No. 811 be granted, by this Honorable Court.

CONCLUSION.

This Court is aware ~~of~~ the Interborough Receivership and also the Protective Custody of Manhattan Company's and Security-holders' interests were commenced by, and under the supervision of, a corrupt judge, Martin T. Manton. At the trial of Manton, (the present Chief Justice of this Court was sitting), a stipulation was entered that Thomas E. Murray had purchased 225 shares of stock in a corporation controlled by Manton and his wife, (Murray paying in two installments, the last in July), just previous to his appointment as receiver. Said stock actually had little or no value at the time of purchase, and the proceeds of the sale

were used to pay Manton obligations. On the same day, August 26, 1932, Manton appointed Murray, he appointed Chadbourne, Stanchfield and Levy counsel for the receivers and he nominated Victor J. Dowling to be co-receiver with Murray, although Dowling was then a partner in said law firm.

The New York World-Telegram of Sept. 7, 1932 quoted an interview with Dowling, who returned from Europe that day. Dowling stated he felt he would have to withdraw from the firm of Chadbourne, Stanchfield and Levy in order to quality as receiver. He made an affidavit on September 23, 1932 which was filed September 27, 1932 that he had resigned. He thereby qualified before Manton. The public furore in respect to the manner Manton appointed himself, emphasized the necessity of Chadbourne's resignation as counsel for the receivers. Manton of his own motion appointed the counsel who thereafter served the Interborough Receivers.

The Receivership, from the beginning, was no more than a determined effort to disaffirm the Manhattan lease. The effort was defeated by Judge L. Hand's opinion in *Murray* v. *Roberts*, deciding no right existed to disaffirm the lease.

The negotiations of the Plan and its terms, were devised by the three parties called "Contracting Committees" in the Plan, after April 17, 1939, the day the decision written by Judge L. Hand was filed.

The Plan to dissolve the receivership operates to defeat my company's and my rights to priority over Interborough bondholders, contrary to the terms of the "Mandate" in *Murray* v. *Roberts*, justice, the laws of the United States and of the State of New York.

Wherefore, I submit, Petition No. 811 should be granted on reconsideration of the denial thereof on February 2, 1942.

Respectfully submitted,

SOLOMON G. SALOMON,
Pro se,
18 Pine Street,
Woodmere, L. I.

(3377)

HIGGINS & HIGGINS, INC., PRINTERS, 48 NEW CHAMBERS ST., N. Y.